

REMARKS

Claims 26-33 are pending before this Response and all stand rejected before this Response. In the present Office action, pending claims 26-33 were rejected under 35 USC § 101 as being directed to non-statutory subject matter. Claims 26-33 were rejected 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 26 and 31 are rejected under 35 USC § 103(a) as being unpatentable over U.S. Pat. No. 5,978,770 to Waytena et al. (hereinafter “Waytena”) in view of U.S. Pat. Pub. No. 2002/0007292 to Paxton et al. (hereinafter “Paxton”). Claims 27, 29 and 32 are rejected under 35 USC § 103(a) as being unpatentable over Waytena in view of Paxson in further view of U.S. Pat. Pub. No. 2003/0093670 to Matsubayashi et al. (hereinafter “Matsubayashi”). Claim 28 is rejected under 35 USC § 103(a) as being unpatentable over Waytena in view of Paxson in further view of Matsubayashi in further view of U.S. Pat. Pub. No. 2005/0010357 to Deh-Lee (hereinafter “Deh-Lee”). Claim 31 is rejected under 35 USC § 103(a) as being unpatentable over Waytena in view of Paxson in further view of U.S. Pat. Pub. No. 2002/0107965 to Piccionelli (hereinafter “Piccionelli”). Claim 33 is rejected under 35 USC § 103(a) as being unpatentable over Waytena in view of Paxson in further view of U.S. Pat. Pub. No. 2002/007292 to Constantini (hereinafter “Constantini”).

In the present Response, claims 26-29 were amended and claim 33 canceled to more clearly recite and distinctly claim the invention and new claims 34-45 were added. Support for the amendments may be found, *inter alia*, at page 13, lines 23-25 of the Specification as filed. Applicant respectfully believes that the rejections have been traversed in light of the following remarks and/or the preceding amendments. All of the pending claims as amended in the present application are believed to be patentable over the cited prior art and the Examiner’s reconsideration is respectfully requested.

Claim rejections under 35 USC § 101

As described previously, the pending claims were rejected under 35 USC § 101 as being directed to non-statutory subject matter. Applicant respectfully disagrees with this rejection but, in the interest of expediting prosecution, has amended the claims to further clarify their statutory nature. The claims as amended more clearly both satisfy statutory requirements both by being tied to a statutory class and by transforming underlying subject matter. Applicant respectfully contends that the Office action's claim rejections under 35 USC § 101 with respect to the claims as amended are traversed in light of the amendments and/or remarks herein and accordingly respectfully requests that the rejections be withdrawn and the claims allowed.

Claim rejections under 35 USC § 112

As described previously, the pending claims were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant respectfully disagrees with this rejection but, in the interest of expediting prosecution, has amended the claims to further clarify their patentable nature. The claims as amended more clearly point out and distinctly claim subject matter. Applicant respectfully contends that the Office action's claim rejections under 35 USC § 112 with respect to the claims as amended are traversed in light of the amendments and/or remarks herein and accordingly respectfully requests that the rejections be withdrawn and the claims allowed.

Claim rejections under 35 USC § 103

As described previously, the pending claims were rejected under 35 USC § 103(a) as being unpatentable over various combinations of Waytena, Paxton, Matsubayashi, Piccionelli, Constantini, and/or Dah-Lee. Applicant has amended the claims and, accordingly, many of the arguments of the Office action with respect to the claims as filed are now moot and those arguments will only be addressed to the extent that they

apply to the claims as currently amended. Applicant respectfully contends that the Office action's claim rejections under 35 USC § 103 with respect to the claims as amended are traversed in light of the preceding amendments and the following remarks.

To establish a *prima facie* case of obviousness under 35 USC § 103, the modification or combination must teach or suggest all of Applicant's claim limitations.¹ If the modification or combination does teach or suggest all of the claim limitations, there must be a reason to perform the modification or combination that would prompt a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.² Such an obviousness analysis is subject to the *Graham* factors of the scope and content of the prior art, the differences between the prior art and the claims, the level of ordinary skill in the pertinent art, and objective evidence of nonobviousness.³ While the teaching-suggestion-motivation (TSM) test cannot be rigidly applied, the test of whether there is a suggestion or motivation to modify or combine the references can provide helpful insight into an obviousness inquiry.⁴

Applicant respectfully contends that the pending claims are patentable as none of the disclosed references, alone or in combination, disclose or suggest the limitations of the claims as amended.

Claims 26-32

Applicant respectfully contends that, in regards to amended claim 26, none of Waytena or Paxton, or any other cited art, alone or in combination, teach or suggest, expressly or inherently, each and every element as set forth in claim 26 and thus fail to establish a *prima facie* case of obviousness under 35 USC § 103.

None of Waytena or Paxton, or any other cited art, alone or in combination, expressly or inherently, disclose or suggest "estimating...a time remaining until said first patron will be served based on historical data corresponding to serving groups of a same size as the party of the first patron" as required by amended claim 26. While Waytena does disclose a party of multiple patrons, Waytena fails to disclose or suggest anything

¹ *In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974).

² *Takeda Chemical Ind. v. Alphapharm Pty.*, 492 F.3d 1350, 1356-57 (citing *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007)).

³ *Id.* at 1355.

⁴ *Id.* at 1357.

relating to estimating a time until service based on historical data corresponding to serving groups of a same size as the party of the first patron as required by amended claim 26. (See, Waytena, col. 2, lines 53-65 and col. 7, lines 1-30). Waytena instead appears to only use group information (and related information such as height and weight) to determine suitability for particular rides. (Id.) To the extent that Waytena teaches any sort of estimated time, it is only used generically and with no information as to its calculation and thus utterly fails in teaching this element. (See, Waytena, col. 13, lines 29-32 and 62-65).

The other cited references fail to solve the deficiencies of Waytena as applied to this element. For example, Paxton's reservation system fails to teach this element as its teaching of groups only is used to split a larger group into smaller ones in order to go on different rides and at particular times. (See, Paxton, paragraph [0037]). Paxton is silent as to algorithms for estimating time until service and is instead focused on queue management and swapping of position. (See, Paxton, paragraphs [0024] and [0025]).

Constantini teaches estimating time based on a rate at which patrons have been served recently, but also fails to teach any sort of estimation based on historical data corresponding to serving groups of a particular size as required by claim 26. (See, Constantini, Abstract and col. 5, lines 1-9). Because Constantini teaches management of a queue of phone calls, it would have no need for anything relating to group size as group size would be irrelevant to managing phone calls. (Id.) Each phone call could be handled in the same way no matter how many people were on the line, and the system of Constantini would have no knowledge of such groups in any event.

Similarly, none of Waytena or Paxton, nor any other cited art, alone or in combination, expressly or inherently, disclose or suggest "notifying...said first patron...upon said patron reaching said notification position in said queue at which said first patron is to be notified, of a current position of said first patron in said queue and an indication of the estimated time remaining until said first patron will be served" as required by amended claim 26. None of the cited references teach this element as none of these references teach the estimated time as claimed in claim 26, as described previously.

Based on the foregoing, Applicant respectfully contends that the cited references neither teach nor suggest, alone or in combination, expressly or inherently, “each and every element as set forth in the claim[s]”, and thus fail to establish a prima facie case of obviousness for amended claim 26 under 35 USC § 103. Claims 27-32, being dependent upon claim 26, incorporate the limitations of claim 26. Accordingly, none of the cited references, alone or in combination, expressly or inherently, disclose or suggest multiple limitations of claims 27-32 for the reasons described for claim 26 and for other reasons. Applicant therefore respectfully requests that the rejections of claims 26-32 be withdrawn and the claims allowed.

Claims 34-45

In regards to new independent claim 34, none of the cited references, alone or in combination, expressly or inherently, disclose or suggest multiple limitations of independent claim 34 for the reasons as described previously regarding claim 26 as well as other reasons. Further, claims 35-40, being dependent upon claim 34, incorporate the limitations of claim 34 and are patentable for the same and additional reasons. Applicant therefore respectfully requests that claims 34-40 be allowed.

In regards to new independent claim 41, none of the cited references, alone or in combination, expressly or inherently, disclose or suggest multiple limitations of independent claim 41 for the reasons as described previously regarding claim 26 as well as other reasons. Further, claims 42-45, being dependent upon claim 41, incorporate the limitations of claim 41 and are patentable for the same and additional reasons. Applicant therefore respectfully requests that claims 41-45 be allowed.

CONCLUSION

In the present response, Applicant amended the Specification and claims 26-29, canceled claim 33, and added new claims 34-45, and responded to the Office action's claim rejections under 35 USC §§ 101, 112, and 103. Accordingly, Applicant believes that this response constitutes a complete response to each of the issues raised in the Office action. In light of the amendments made herein and the accompanying remarks, Applicant respectfully traverses the rejections in the Office action and believes that the pending claims as amended are in condition for allowance.

Accordingly, Applicant respectfully requests that the rejections be withdrawn, the pending claims be allowed, and the application advance toward issuance. If the Examiner has any questions, comments, or suggestions, the undersigned attorney would welcome and encourage a telephone conference at (512) 692-7297.

No fee is believed due with this paper. However, if any fee is determined to be required, the Office is authorized to charge Deposit Account 09-0457 for any such required fee.

Respectfully submitted,

Date: August 3, 2009

By: /James L. Nickelson/

James L. Nickelson

Reg. No. 46,140

Customer No.: 87788

Schubert Osterrieder & Nickelson PLLC

6013 Cannon Mtn. Dr., S14

Austin, Texas 78749

Tel. (512) 692-7297

Fax (512) 301-7301

ATTORNEY FOR APPLICANT(S)